United Nations CRC/C/SR.2255

Convention on the Rights of the Child

Distr.: General
19 January 2018

Original: English

Committee on the Rights of the Child
Seventy-seventh session

Summary record of the 2255th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 16 January 2018, at 10 a.m.

Chair: Ms. Winter

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties (*continued*)

Combined fifth and sixth periodic reports of Sri Lanka (*continued*) (CRC/C/LKA/5-6; CRC/C/LKA/Q/5-6 and CRC/C/LKA/Q/5-6/Add.1)

1. *At the invitation of the Chair, the delegation of Sri Lanka took places at the Committee table.*

2. **Ms. Manatunga** (Sri Lanka) said that the Government continued to address the issue of the minimum age for marriage under the Muslim Marriage and Divorce Act, with the active participation of the Muslim community. A committee chaired by a former Supreme Court justice had concluded its deliberations and would shortly submit its report to the Government. A Cabinet subcommittee, whose members included the Minister of Justice and the Minister of Women and Child Affairs, had also been established to expedite the reform process, which was time-consuming, owing primarily to the divergent views on the matter expressed within the Muslim community. With a view to addressing that challenge, the Government had launched a parallel consultative and awareness-raising process with the community.

3. The National Human Rights Action Plan 2017–2021 clearly recognized the need to review article 16 of the Constitution in consultation with the respective communities. The article upheld the validity of certain Thesawalamai, Kandyan and Muslim laws notwithstanding their inconsistency with fundamental constitutional rights.

4. With regard to the principle of non-discrimination against children of different sexual orientation and gender identity, certain provisions of the Penal Code, which had been enacted during the colonial era, had been interpreted as criminalizing same-sex relations. That interpretation was not reflected in current policy and practice. The National Human Rights Action Plan 2017–2021 provided for amendments to the Penal Code, including to provisions applicable to the lesbian, gay, bisexual, transgender and intersex community, in order to ensure that all definitions of criminal offences complied with international human rights standards. Sri Lanka, in its interaction with human rights treaty bodies, had consistently defended its position that article 12 of the Constitution, on equality and non-discrimination, did not contain an exhaustive list of prohibited grounds of discrimination and that discrimination based on sexual orientation or gender identity could therefore be challenged under that article. The issue had also been brought to the attention of the Constitutional Assembly that was drafting a new constitution. The report of the Assembly's Sub-Committee on Fundamental Rights contained a comprehensive anti-discrimination provision that referred to sexual orientation and gender identity.

5. The judiciary had adopted a progressive and proactive approach in its interpretation of the impugned provisions of the Penal Code. The Supreme Court had recently acknowledged, in appeal No. 32/12, that consensual sex between adults should not be policed by the State or deemed to constitute grounds for criminalization. She was therefore confident that, despite certain social, political and cultural challenges, Sri Lanka was in a position to ensure non-discrimination for lesbian, gay, bisexual, transgender and intersex persons.

6. According to the most recent statistics, dating from the 2012 national census, there were currently 88,740 children with disabilities in Sri Lanka. Updated figures would be available following the 2021 census. She acknowledged that more vigorous action was required to support their rights. In recent years the Government had consistently recognized the vital need to replace the current charity-based system with a rights-based system. Sri Lanka had ratified the Convention on the Rights of Persons with Disabilities in February 2015, and the Ministry of Social Empowerment and Welfare had drafted legislation to give effect to those rights and to establish an independent body entrusted with policymaking and all other matters pertaining to persons with disabilities. Steps had been taken to draft a bill on sign language and regulations on the rights of white cane users. The National Human Rights Action Plan 2017–2021 contained a lengthy chapter on the rights of persons with disabilities, including special provisions for children with disabilities. The chapter was the outcome of vibrant discussions with civil society activists, including at least two persons

with disabilities. A two-tier monitoring mechanism headed by the Prime Minister was tasked with monitoring the implementation of the Action Plan. The Government also continued to provide financial and other forms of assistance to promote educational opportunities, including vocational training, for children with disabilities and to provide increased livelihood support.

7. **Ms. Aho Assouma** (Country Task Force) said that she wished to know why children were perceived as perpetrators rather than victims and could be prosecuted for homosexuality under the Penal Code.

8. The programmes on behalf of children with disabilities seemed to focus on children between 5 and 19 years of age. She asked whether there were any programmes for younger children and whether existing programmes were coordinated throughout the country.

9. **Ms. Manatunga** (Sri Lanka), reiterating that the Penal Code provisions on sexual orientation dated from the colonial era and were not reflected in current State practice or policy, said that children were never deemed to be perpetrators on account of their sexual orientation or gender identity.

10. The Ministry of Social Empowerment and Welfare, the Ministry of Education, the Ministry of Health and other ministries had developed a comprehensive approach aimed at supporting the rights of children with disabilities. Since 2007, the Government had provided a monthly allowance of 3,000 rupees (SL Rs) to 30,654 low-income families with children with disabilities. The amount allocated for such families in 2017 was SL Rs 711 million. Families whose income was less than SL Rs 6,000 were provided with up to SL Rs 20,000 in financial assistance for medical purposes. A total of 319 persons with disabilities had benefited from such assistance in 2017 and the Government had allocated SL Rs 4.9 million for the purpose. With a view to empowering children with disabilities to live independently, financial assistance was provided for assistive devices such as spectacles, wheelchairs, hearing devices, tricycles and crutches. In 2016 a total of 45 mobile service programmes had been carried out for that purpose throughout the country. As at 31 August 2016, SL Rs 35,995,000 had been provided to families with children with disabilities under the housing assistance programme.

11. The National Secretariat for Persons with Disabilities had begun training public officials in sign language, Braille methodology and mobility orientation with a view to improving the services provided to children with disabilities. Access to education was provided by means of special units in schools, inclusive mainstream classrooms and special schools. Some 5,088 children with disabilities were currently attending 525 education units in Government-run schools and 2,795 students with disabilities were attending 25 special schools. Low-income families were provided with an educational allowance of up to SL Rs 10,000 to encourage them to send children with disabilities to school. As a result of the University Grants Commission programme mentioned in paragraph 56 of the replies to the list of issues (CRC/C/LKA/Q/5-6/Add.1), the number of students with special needs receiving university education had increased from 73 in 2012/13 to 105 in 2016/17.

12. **Ms. Sigera** (Sri Lanka) said that the Ministry of Foreign Employment Promotion and Welfare had adopted a number of measures aimed at minimizing the impact of women's migration on their children. It had recruited almost 1,500 officers to investigate the appropriateness of migration, to ensure family security and to provide for the children's protection and care. The Ministry had issued a circular requiring the production of a family background report for children under the age of 18. The migration of women had declined from 300,703 in 2014 to 263,443 in 2015 and 242,930 in 2016. A number of social welfare programmes had been introduced on behalf of such families. They included housing loans, scholarships, vocational training and low-interest loans. The Department of Probation and Child Care Services had conducted research to assess the gravity of the psychosocial impact on children of their mother's or father's migration.

13. About 6,000 social workers were deployed throughout the country at the divisional and district levels. They were required to hold qualifications in sociology and psychology and were recruited by a variety of ministries. They implemented programmes at the grass-roots level, providing multisectoral support for families.

14. Children in need of care and protection and children in conflict with the law were institutionalized only as a last resort following several corrective measures. The preliminary institutionalization or placement decision was taken by a provincial probation committee in cooperation with the child's parents or guardians. The committee's decision was then referred to a court, which decided whether to order a diversion programme, a foster programme or institutionalization. Diversion programmes were arranged for convicted children, children who were conditionally discharged, children who were handed over to their parents or guardians, or children who were kept under probation at the provincial level.

15. According to the most recent survey, about 14,000 children were currently placed in 414 institutions. Eighty per cent of the children had at least one living parent. The parents' consent was required in all cases of adoption. As parents might be financially unable to provide proper care for their children, social care programmes were run by the Department of Probation and Child Care Services and "back to home" programmes were run by provincial councils. The courts also issued "fit person orders" in respect of fostering arrangements for children living in difficult circumstances, which encouraged children to live with family members and were supported by government funds.

16. The 2017 policy on zero tolerance of child labour was posted on the website of the Ministry of Labour. The implementation of the policy was closely monitored by the Department of Probation and Child Care Services.

17. **Ms. Sandberg** (Coordinator, Country Task Force) asked whether the "back to home" programmes were confined to just a few provinces or had been extended to the whole country. Had the programmes proved successful in deinstitutionalizing children?

18. **Ms. Sigera** (Sri Lanka) said that the departmental and provincial budgets for 2018 had been increased with a view to providing infrastructure and housing facilities under the "back to home" programmes throughout the country. She would provide statistical data to the Committee in due course.

19. According to the 2016 Child Activity Survey, only about 39,000 out of roughly 6 million children, or fewer than 1 per cent, were engaged in hazardous forms of child labour. A marked reduction in the phenomenon had been achieved through programmes such as the International Labour Organization (ILO) Country Level Engagement and Assistance to Reduce Child Labour (CLEAR) project. The Child Labour Free Zone in the Ratnapura District had been replicated in other areas. The legislation was being amended with a view to prohibiting the employment of children between the ages of 16 and 18 years. The National Child Protection Authority had conducted 33 awareness-raising campaigns throughout the country in 2017. In addition, the staff of the Ministry of Labour were working closely with the police, child protection officers and probation officers to eradicate child labour.

20. **Ms. Aho Assouma** asked whether the programmes to combat child labour would also cover children who worked in the sex trade on Sri Lankan beaches.

21. **Ms. de Livera** (Sri Lanka) said that the National Child Protection Authority had begun to implement a pilot project in Hikkaduwa District, in cooperation with the provincial education authority, to identify child sex workers on beaches and establish a sex offenders register. The Authority planned to seek support for the project from the Sri Lanka Tourism Development Authority and the Ministry of Tourism Development and Christian Religious Affairs.

22. **Mr. Gastaud** (Country Task Force) asked whether the legal minimum working age was expected to be increased to 16 years or 18 years.

23. **Ms. Sigera** (Sri Lanka) said that the minimum working age was due to be changed from 14 years to 16 years, as education had been made compulsory up to the age of 16.

24. **Ms. Jinasena** (Sri Lanka) said that there had been a delay in adopting the bill on judicial protection for children, which would repeal certain provisions of the Children and Young Persons Ordinance and introduce new provisions to give effect to international child protection standards. The Attorney General had recommended various amendments under which the bill would apply to suspected, accused and convicted child offenders; would

provide greater protection for children taken into custody by introducing procedures to be followed by the police, including parental notification and possible referral to a mediation board instead of a court; and would grant the Attorney General the authority to suspend criminal proceedings for children who did not reoffend within a specified time period. The amendments had been adopted and, once approved by the Attorney General, the bill would be referred to the Cabinet and, subsequently, to Parliament.

25. Also under consideration was a bill to amend the Penal Code in order to change the age of criminal responsibility from 8 years to 12 years and the minimum age range for maturity of understanding regarding the consequences of criminal acts from 8–12 years to 12–14 years. In addition, the authorities were considering an amendment to the Code of Criminal Procedure Act (No. 15 of 1979) under which all child offenders would be referred for examination by a doctor, who would produce a report to serve as the basis on which the magistrate would judge the maturity of the child. Once approved by the Attorney General, both amendments would be submitted to Parliament.

26. All forms of corporal punishment, including whipping, were prohibited under the Corporal Punishment (Repeal) Act (No. 23 of 2005). In addition, the Constitution prohibited torture, both physical and psychological; all acts that caused harm to another person, even when committed by a parent or teacher against a child, were therefore prohibited.

27. Other legal provisions that protected children against physical and psychological abuse and suffering could be found in the Children and Young Persons Ordinance, the Penal Code, the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act (No. 20 of 1998) and the Prevention of Domestic Violence Act (No. 34 of 2005). In addition, the Ministry of Women and Child Affairs, the Ministry of Education and the National Child Protection Authority were working to raise awareness about corporal punishment. The draft National Child Protection Policy included provisions to combat abuse of all kinds in schools, in particular corporal punishment, the humiliating and degrading treatment of children, bullying, and sexual and gender-based violence.

28. **Mr. Gastaud** said that it would be interesting to know whether the Government intended to introduce a minimum age for imprisonment, whether imprisonment was a sentence of last resort and whether there were any alternatives to detention for child offenders.

29. **Ms. Sandberg** asked whether the provision of Sri Lankan law that served as a legal defence for the corporal punishment of children had been repealed.

30. **Ms. Jinasena** (Sri Lanka) said that, under Sri Lankan law, no one was permitted to physically assault another person. Offenders could be prosecuted under the Penal Code. Although the domestic law contained no specific provisions against corporal punishment, it included various other provisions to that effect, which applied to both adults and children. Sexual harassment, even when committed by a parent, was also criminalized under the Penal Code.

31. With regard to the legal definition of "child", the State party acknowledged that the law was currently insufficient as it did not contain a uniform definition. Most domestic laws defined a child as a person under the age of 18. After ratifying the Convention in 1991, the Government had passed legislation to amend the Penal Code in order to cover a range of violations against children, including trafficking and physical and sexual abuse, in relation to which a "child" was defined as any person under the age of 18.

32. **Ms. Sandberg** asked whether the definition of a "child" as a person under 18 years of age also applied in cases of statutory rape, as the age of consent was 16 years.

33. **Ms. Jinasena** (Sri Lanka) said that, in accordance with the Penal Code, the offence of rape was considered more serious if the victim was under 16 years of age, in which case it carried a mandatory minimum sentence of 10 years' imprisonment. If the victim was 18 years of age or older, the offender could be sentenced to 7 to 20 years' imprisonment.

34. **Ms. Aho Assouma** said that she wished to know whether section 363 of the Penal Code would be amended to cover all girl victims of rape, without exception, and whether abortions were ever allowed in cases of rape.

35. **Ms. Jinasena** (Sri Lanka) said that if the child was between the ages of 16 and 18 years, a mandatory non-summary inquiry must be held and, if it was proved that the child had not given consent, the victim's age was considered to be an aggravating factor. With regard to cases involving rape victims who were Muslim girls, the law currently provided that sexual intercourse without consent did not constitute rape if the victim was married to the perpetrator, even if the victim was under 16 years of age. Amendments to the law were currently under consideration, however.

36. **Ms. Otani** (Country Task Force) asked how much progress had been made towards amending the provisions on the exception to statutory rape and on the minimum age for marriage under Islamic law, as those issues were interconnected.

37. **Ms. Jinasena** (Sri Lanka) said that, in the interest of ensuring equal treatment for all persons under the law, the Government would take into account the recommendations of the two committees that had been established to assess those issues.

38. **Ms. de Livera** (Sri Lanka) said that, following complaints from the public that children in street situations were loitering outside religious and other institutions, the police had developed a project in partnership with various government bodies, including the Ministry of Education and the Children and Women's Bureau, to identify the children's needs. The Government had established an emergency shelter for the children as an alternative to orphanages. A number of children formerly in street situations had performed street dramas to raise public awareness of violations of children's rights. In the Northern Province, a deinstitutionalization and family strengthening programme set up by the Commissioner of Probation and Child Care Services had met with considerable success.

39. The National Child Protection Authority worked closely with the police cybercrime unit and other State bodies to safeguard children's rights online. In 2017, the Authority's 24-hour toll-free helpline had received 100 complaints in that regard, and the Authority was directly involved in 25 investigations. The Authority had distributed leaflets at schools across the country to educate children and parents about responsible Internet use and had delivered training to teachers. Moreover, Internet service providers were legally obliged to report any cybercrime involving children to the police. Provision had been made in the Authority's 2018 budget to train information technology teachers in all schools in Sri Lanka.

40. The Government was prioritizing the prevention of corporal punishment. In one case in the Southern Province, where the local police had been reluctant to investigate allegations against a school principal of high community standing, the police assistant superintendent had intervened and a documented case of grievous hurt had now been submitted to the Attorney General for examination. The National Child Protection Authority was also implementing the recommendations of a report it had commissioned on corporal punishment.

41. **Mr. Gastaud** asked how long children in street situations stayed in emergency centres and whether they were subsequently returned to the streets, reunified with their families or sent to some other institution.

42. **Ms. de Livera** (Sri Lanka) said that no children had been accommodated in the emergency centre to date. However, the centre was a viable and more comfortable alternative to overcrowded orphanages.

43. **Ms. Aho Assouma** said that she wished to know whether the State party had a mechanism for combating the exploitation of children online and whether any studies had been conducted or any data had been compiled in that regard. Against the backdrop of generalized impunity in Sri Lanka, she also wondered whether any action had been taken to improve public confidence.

44. **Ms. Sandberg** said that she would like to know when responsibility for schools for war-affected children in the Northern Province would be transferred from the military to the Ministry of Education. She would also be grateful for information on the former child

soldiers who had surrendered to the Sri Lankan army at the end of the war and were reportedly still missing.

45. **Mr. Pathinathan** (Sri Lanka) said that, following the conflict, the relatives of many children had reported them as missing and had filed tracing requests with the authorities at both the district and the national levels. In December 2009, the District Secretary of Vavuniya had responded by establishing a Family Tracing and Reunification Unit, whose caseworkers had been trained by the United Nations Children's Fund (UNICEF) and international non-governmental organizations (NGOs). Since then, some 1,895 children had been reunified with their relatives. Over 600 children had yet to be traced because they had been too young to recount their experience or because their relatives had submitted incorrect information. More than 500 former child soldiers had been reunited with their families. To address shortfalls in human resources and funding, the Government was taking steps to merge the Unit with the newly established Office on Missing Persons. In addition, the Northern Provincial Council had allocated SL Rs 100 million to the Department of Probation and Child Care Services to strengthen family tracing and reunification efforts.

46. **Ms. Sandberg** said that she wished to hear the State party's response to allegations that some former child soldiers had not been returned to their families.

47. **Mr. Gastaud** said that the actual number of missing children was likely to be higher than the official figures suggested. He wondered whether the State party had calculated the number of children not yet identified. He would also appreciate further information on the role of the Office on Missing Persons and how it would work together with the Family Tracing and Reunification Unit.

48. **Mr. Pathinathan** said that the figures had been provided by the Sri Lanka Administrative Service. Efforts were still being made to trace the 611 children not yet identified. The final figure would depend on the results of those efforts.

49. **Mr. Aryasinha** said that Sri Lanka was strongly committed to implementing Human Rights Council resolution 30/1. The Office on Missing Persons was an independent and permanent body whose chair and commissioners would be appointed shortly by the President. It had been allocated a budget of SL Rs 1.4 billion for 2018. The Secretariat for Coordinating Reconciliation Mechanisms had been working with the International Committee of the Red Cross and other experts to establish the Office's organizational structure and training needs. Once appointed, the commissioners would build their own registry of cases based on the databases of previous commissions. Other mechanisms to be established included a truth and reconciliation commission, a reparations office and a judicial mechanism. Legislation for the establishment of the truth commission had been drafted following an island-wide consultation that had involved civil society. Consultation, training and other steps were being taken to establish the judicial mechanism.

50. To combat impunity and restore public confidence, the Government had increased the independence and resources of judicial and law enforcement institutions, including the National Police Commission and the Judicial Service Commission. The National Human Rights Commission of Sri Lanka had issued a series of directives to that end. The President had also issued directives to the armed forces and police to uphold human rights standards.

51. **Ms. Upulmalee** (Sri Lanka) said that numerous drug prevention measures had been taken as part of a broad approach to child protection, which was a government priority. A special presidential task force and a drug prevention unit worked in collaboration with several ministries, including the Ministry of Women and Child Affairs, and drug prevention was one of the goals of the Sustainable Schools Programme.

52. **Ms. Senadheera** (Sri Lanka) said that the Child Health Development Record, which was issued to every child, contained immunization and other medical information. Children in grades 1, 4, 7 and 10 underwent medical examinations at school; the purpose was not only to determine overall health, but also to identify any disabilities that a child might have. In addition, as part of an extensive screening programme, children were tested for congenital hypothyroidism at birth. A project to test newborns for congenital heart disease was being introduced at major hospitals; eventually such testing would be performed at all hospitals.

53. Breastfeeding was given priority in the country's health-care system and breastfeeding rates in Sri Lanka were among the highest in the world. The Code for the Promotion, Protection and Support of Breast Feeding and Marketing of Designated Products, which regulated items such as feeding bottles and products marketed as breast milk substitutes, would be revised to cover products intended for children up to the age of 3 years.

54. The National Strategy for Infant and Young Child Feeding (2015–2020) included guidelines for health-care staff who advised parents on child nutrition. Infant feeding practices did not involve gender discrimination. Through a variety of programmes, children and pregnant women, regardless of their economic status, were provided with calorie and vitamin supplements, and therapeutic nutritional supplements were prescribed to severely malnourished children.

55. **Ms. Aho Assouma** said that she would like to know whether the measures described were also implemented in villages and remote areas. In addition, she would appreciate information on the prevention of mother-to-child transmission of HIV/AIDS.

56. **Ms. Senadheera** (Sri Lanka) said that all pregnant women were tested for HIV under a national programme. In remote villages that lacked testing facilities, medical staff collected blood samples which were then forwarded to nearby hospitals. She was confident that by 2020, it would be possible to eliminate mother-to-child transmission completely. In addition, family health workers made house calls to assess the nutritional status of children and mothers and to advise pregnant women on contraception. The country had very good neonatal, infant and maternal mortality indicators.

57. **Ms. Senaratne** (Sri Lanka) said that a national action plan for social development included a programme to ensure that children in vulnerable situations had access to early childhood, primary and secondary education. In addition, government measures such as poverty reduction and microfinance programmes had resulted in notable advances, raising the standard of living of vulnerable children and their families. Meal programmes provided morning and midday meals for some 1.5 million schoolchildren, whose eligibility for such programmes was based exclusively on family income.

58. **Ms. Jinasena** (Sri Lanka) said that the Code of Criminal Procedure Act and the proposed amendments thereto provided for alternatives to custodial sentences for juvenile offenders, such as referral to a mediation board, compounding of offences and imposition of fines.

59. **Mr. Mezmur** asked whether the Government was seriously considering the issue of 16- to 18-year-olds in the justice system, whose treatment as adults constituted a violation of the Convention.

60. **Ms. Jinasena** (Sri Lanka) said that the Ministry of Justice was considering a proposal on uniformity of treatment for all juvenile offenders, regardless of age. With respect to abortion, a special committee established to study the question had recommended that the termination of pregnancy should be decriminalized in cases of rape or incest, severe fetal impairment or pregnancy of a girl younger than 16 years of age. The committee had also recommended a formal procedure to be followed in circumstances where an abortion might be warranted.

61. Under the 2016 Right to Information Act, which served to advance a culture of openness, all citizens, including children, were entitled to seek information from any public institution. Finally, the National Anti-Human Trafficking Task Force, which was led by the Ministry of Justice, was responsible for addressing the trafficking of children. The Task Force had produced a guide on the criminalization of trafficking in persons and migrant smuggling and had conducted awareness-raising activities for the benefit of vulnerable communities and victims.

62. **Mr. Gastaud** said that he appreciated the delegation's participation in what had been a constructive dialogue with the Committee. He encouraged the State party to continue its work on a variety of issues, including the establishment of suitable indicators on which to base its child protection policy, the elimination of child marriage, the identification of missing children, measures to address the economically motivated

migration of mothers, anti-discrimination regulations and the prompt adopuion of the bill for the judicial protection of children.

63. **Ms. Senaratne** (Sri Lanka) said that the dialogue with the Committee had been very useful and that the questions raised would be considered with care.

The meeting rose at 1 p.m.